

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

George Tiaffay,

Petitioner

v.

Calvin Johnson, et al.,

Respondents

Case No. 2:20-cv-02257-JAD-EJY

**Order Granting Motion for Leave to File
Exhibits Under Seal**

[ECF No. 33]

Federal habeas petition George Tiaffay moves for leave to file Exhibits 52–59 under seal, arguing that they constitute medical and mental-health records and it is appropriate for courts to seal such documents.¹ Respondents do not contest the sealing request but rather contend that the court should strike the subject exhibits because they are not part of the state-court record, petitioner has not sought to expand the record under Rule 7 of the Rules Governing § 2254 cases, and the exhibits thus cannot be considered in ruling on the second amended petition.² Petitioner counters that portions of the exhibits are part of the state-court record or were exchanged during pretrial discovery,³ he need not obtain a court order permitting expansion of the record as a predicate to filing the exhibits for the court’s consideration,⁴ and the determination whether the court may consider the exhibits should be deferred for a merits ruling or later motions.⁵

Habeas Rule 7 does not require a petitioner to seek leave of court to expand the record prior to submitting documents for a court’s consideration.⁶ Without ruling whether the exhibits may be considered for any purpose in this action,⁷ I grant the motion to seal Exhibits 52–59.

¹ ECF No. 33 at 2–3.

² ECF No. 35 at 1–3.

³ ECF No. 36 at 5–6.

⁴ *Id.* at 4.


⁵ *Id.* at 2–4.

⁶ *See Shah v. U.S.*, 878 F.2d 1156, 1162–63 (9th Cir. 1989).

⁷ I direct the parties that where appropriate in future filings, they must submit detailed records demonstrating whether, and which portions of, the exhibits, may be considered in this action. *See, e.g.*, 28 U.S.C. § 2254(e)(2).

1 Exhibit 52 consists of detailed therapy records of Shawna Tiaffay.⁸ Exhibits 53–59 constitute
2 detailed medical, psychiatric, and pharmaceutical prescription records of the petitioner.⁹ The
3 protection of medical privacy generally qualifies as a “compelling reason” for sealing records.¹⁰
4 Having reviewed and considered the matter in accordance with *Kamakana v. City and County of*
5 *Honolulu*¹¹ and its progeny, I find that there is a compelling need to protect the medical privacy
6 of Shawna Tiaffay and the petitioner that outweighs the public’s interest in open access to court
7 records.

8 IT IS THEREFORE ORDERED that Petitioner’s Motion for Leave to File Exhibits
9 Under Seal [ECF No. 33] is GRANTED.

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11 U.S. District Judge Jennifer A. Dorsey
October 18, 2022

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⁸ ECF No. 34-1.

26 ⁹ ECF Nos. 34-2–34-8.

27 ¹⁰ *E.g., Abbey v. Hawaii Employers Mut. Ins. Co. (HEMIC)*, 760 F. Supp. 2d 1005, 1013 (D. Haw.
28 2010).

¹¹ 447 F.3d 1172 (9th Cir. 2006).